

1 STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-(JMP)

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5 In the Matter of:

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7 LEHMAN BROTHERS HOLDINGS INC., et al.,

8 Debtors.

9 - - - - -x

10 Case No. 08-01420-(JMP)(SIPA)

11 In the Matter of:

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13 LEHMAN BROTHERS INC.,

14

15 Debtor.

16 - - - - -x

17 United States Bankruptcy Court

18 One Bowling Green

19 New York, NY 10004-1408

20 January 29, 2014

21 10:00 AM

22 B E F O R E:

23 HON. JAMES M. PECK

24 U.S. BANKRUPTCY JUDGE

25 ECRO: JEANELLE

1 HEARING re Doc No. 8031 - Fourteenth Application of Hughes
2 Hubbard & Reed LLP for Allowance of Interim Compensation for
3 Services Rendered and Reimbursement of Actual and Necessary
4 Expenses Incurred from July 1, 2013 through November 30, 2013
5

6 HEARING re Doc No. 8013 - Joint Notice of Presentment of Sixth
7 Amended Order Pursuant to section 78eee(b)(5) of SIPA, Sections
8 105, 330 and 331 of the Bankruptcy Code, Bankruptcy Rule
9 2016(a) and Local Bankruptcy Rule 2016-1 Establishing
10 Procedures Governing Interim Monthly Compensation of Trustee
11 and Hughes Hubbard & Reed
12

13 HEARING re Adversary Case No. 10-04103 - Status Conference
14 First Bank Puerto Rico v. Barclays Capital, Inc.
15

16 HEARING re Doc No. 42153 - Motion of Lehman Brothers Holdings
17 Inc. Pursuant to Bankruptcy Rule 9019 for Approval of
18 Settlement Agreement Regarding Claim of Federal National
19 Mortgage Association
20

21 HEARING re Doc No. 40066 - Motion to Classify and Allow the
22 Claim Filed by the Federal Home Loan Mortgage Corporation
23 (Claim No. 33568) in LBHI Class 3
24
25

1 HEARING re Doc No. 2023 - Motion of Lehman Brothers Holdings
2 Inc. to Extend Stay of Avoidance Actions and Grant Certain
3 Related Relief

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25 Transcribed by: Theresa Pullan

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P R O C E E D I N G S

THE COURT: Be seated please. Good morning.

MS. MARCUS: Good morning, Your Honor. Jacqueline Marcus of Weil Gotshal and Manges on behalf of Lehman Brothers Holdings, Inc. as Plan Administrator and its affiliated chapter 11 estates.

We are here this morning, Your Honor, for the Sixth-Ninth Omnibus hearing. We have a limited agenda. And before we get started and with the Court's indulgence, I'd like to make a few comments regarding this, our last omnibus hearing, before you.

Today's hearing comes almost five and a half years since these cases were filed. A lot has happened to all of us during these past five years, both on a personal and a professional level. In terms of the Lehman chapter 11 cases, there have been many milestone events -- the filing of the cases, the Barclay sale and confirmation of a consensual plan, to name but a few. But in addition to these high profile events, we've also had 68 omnibus hearings. There have more than 42,000 docket entries, 65,000 claims filed, 456 omnibus claims objections, approximately 200 adversary proceedings, and approximately 500 derivatives related ADRs. To date, the estates have distributed approximately \$60 billion. Over the past five years we've heard these cases referred to variously as the biggest cases ever, extraordinary and unprecedented. To

1 be sure, all of that is true. But it is also true that for
2 everyone involved in these cases on a day to day basis, there
3 has been an enormous amount of work, responsibility and
4 pressure.

5 On behalf of the Lehman, Weil and Alvarez and Marcel
6 teams, we would like to express our appreciation to the Court
7 and to your entire staff for your hard work, your combination
8 of scholarship and practicality, the careful consideration that
9 you have given to all issues, and the professional courtesy you
10 have extended to all of us. In terms of scheduling, you and
11 your staff have accommodated the needs of the cases at every
12 turn, helping us to accomplish an extraordinary amount in a
13 relatively short period of time. It was very rewarding and
14 challenging to appear before you and know that regardless of
15 the issue, you had read all the pleadings and were ready to
16 engage us in very thought provoking colloquy. And preparing
17 for hearings, anticipating and being ready to answer all of
18 your hard questions has helped us all become better advocates.

19 I heard your comment recently that one of the recent
20 developments in the practice of law that disturbs you is the
21 frequency and extent of litigation. Your preference for
22 negotiated settlements is well known and has informed the
23 manner in which we have addressed many contested issues. Your
24 approach has led the chapter 11 estates and their adversaries
25 to reach consensus and compromise with respect to many, many

1 disputes, saving the estates and all parties in interest a
2 tremendous amount of time and money.

3 We look forward to working with Judge Chapman to
4 bring these cases to their conclusion. We just wanted to mark
5 this occasion and let you know that we'll miss you and we wish
6 you luck in your future endeavors.

7 THE COURT: Thank you so much.

8 MS. MARCUS: Turning to today's agenda, Your Honor,
9 we're going to start with the Securities Investors Protection
10 Corporation proceedings regarding Lehman Brothers, Inc. and Mr.
11 Kobak will be handling them.

12 MR. KOBAK: Good morning, Your Honor, James Kobak,
13 Hughes, Hubbard and Reed for the SIPA Trustee.

14 THE COURT: Good morning.

15 MR. KOBAK: Your Honor, I'm here on our fourteenth
16 fee application, which will also be the last time we're before
17 you on a matter like this. Before I begin, I know I've made
18 some remarks before, but I'd like to join on behalf of the SIPA
19 trustee, Hughes Hubbard, Deloitte and the rest of our team in
20 all of the remarks that Ms. Marcus so aptly made.

21 Your Honor, with respect to the SIPA case has said at
22 various times, it's the largest SIPA case in history, it's the
23 most complex SIPA case in history, and it's been the most
24 successful SIPA case in history. There's nothing any of us
25 could have done about it being the largest and most complex,

1 but I think that the fact that it was the most successful owes
2 a tremendous to the Judge that presided over it, and we're very
3 grateful for that, and I'm sure the customers and creditors are
4 also grateful.

5 THE COURT: Thank you.

6 MR. KOBAK: So with that, Your Honor, I'll try to
7 keep this brief. I believe Mr. Caputo is on the phone. SIPA
8 has reviewed our application and supports it. Our application
9 covers the period July through November, 2013, the total of
10 something like 31,600 hours. It reflects our customary 10
11 percent public interest discount, and a number of write offs as
12 we looked at our fees and as SIPA looked at our proposed fees
13 that it totaled over \$250,000 for the period.

14 This was a very busy period, as many periods have
15 been in the case. It saw the conclusion of distribution of
16 some \$12 billion to customers, largely completing the customer
17 phase of the case. We resolved through motions over 1500
18 general creditor claims involving \$1.5 billion and resolved
19 many, many others consensually. We made a lot of progress,
20 some of which bore fruit in the period, some of which is only
21 bearing fruit now with respect to the negotiations with the
22 foreign affiliates, including a major settlement with the
23 Japanese affiliate which will be one of the matters that Judge
24 Chapman hears next week.

25 So with that, Your Honor, I'd ask, I move that you

1 approve our application.

2 THE COURT: I've reviewed the application and the
3 recommendation of SIPA, I believe it to be consistent with
4 applicable law. I give the recommendation of the Securities
5 Investor Protection Corporation considerable reliance in
6 approving the fees, and I'm pleased to do so.

7 MR. KOBAK: And we also presented today the interim
8 compensation procedures order, and pursuant to that we request
9 release of a holdback. We will still have a remaining \$1
10 million holdback which has been consistent, but we'd ask that
11 the rest of it which totals approximately \$3 million be
12 released.

13 THE COURT: That's fine. I looked at the sixth
14 amended order, and according to the blackline, the only
15 substantive change is a change from February to November of
16 2013.

17 MR. KOBAK: That's correct. I don't even know if
18 that's substantive, Your Honor, but that's correct.

19 THE COURT: Well it's substantive because it affects
20 your fees.

21 MR. KOBAK: And again, thank you, Your Honor, for
22 everything we've done. And we too wish you well on your future
23 endeavors.

24 THE COURT: Thank you so much, it's been a pleasure.

25 MR. KOBAK: If I could be excused, Your Honor, I

1 think our part is done.

2 THE COURT: If you wish to be, you can go back to
3 your work.

4 MR. KOBAK: Thank you.

5 MS. MARCUS: Turning to the LBHI calendar, Your
6 Honor, the first matter on today's agenda is a status
7 conference in the matter of the First Bank of Puerto Rico vs.
8 Barclays Capital.

9 THE COURT: Okay.

10 MR. MORAG: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. MORAG: Boaz Morag of Cleary Gottlieb for
13 Barclays Capital. This will be very brief. As we noted in our
14 January 15th letter to the Court, the last issue in this
15 matter, in this adversary proceeding is the matter of the
16 bonding of the judgment. As late as last night we had thought
17 and hoped that First Bank's bonding papers would be ready so
18 that we could either present them to you or discover whether
19 there's any issue. But they weren't. So we really have
20 nothing to do at this point other than to thank you for your
21 work on this case, extend our best wishes as well, and just say
22 that when the bond papers come in we will take them up with
23 Judge Chapman's chambers.

24 THE COURT: Thank you. Just a question. To what
25 extent is the District Court aware of what's going on currently

1 here?

2 MS. COHEN: I can speak to that.

3 THE COURT: Sure.

4 MS. COHEN: Judith Cohen from Dickstein Shapiro, Your
5 Honor. Because we had prior notice of appeal with Judge
6 Buchwald, they had been kind of keeping us on their tickler and
7 I've been getting calls regularly from Judge Buchwald asking
8 the status and keeping them apprised to where we are.

9 THE COURT: Fine. I just wanted to be comfortable
10 that the District Court was well aware of what's going on in
11 terms of status.

12 MS. COHEN: Yes.

13 THE COURT: Fine. Thank you very much.

14 MS. COHEN: Thank you very much.

15 MR. MORAG: May I be excused?

16 THE COURT: You may be excused.

17 MR. PEREZ: Good morning, Your Honor, Alfredo Perez.
18 Your Honor, we're here, I'm here first with respect to Lehman's
19 motion pursuant to Rule 9019 for approval of settlement with
20 Fannie Mae. Mr. Neier representing Fanny Mae is here in the
21 courtroom.

22 Your Honor, as the Court is aware, we had filed
23 pleadings requesting that part of the claim be subordinated.
24 As a result of ongoing discussions, we were able to resolve the
25 matter which resulted in the filing of the 9019.

1 In essence, Your Honor, Fannie Mae filed a proof of
2 claim for \$19 billion approximately. It had several
3 components. First, there was a [indiscernible] component,
4 securities fraud component, claims relating to certain remic
5 (phonetic) trusts as well as certain servicing claims that were
6 alleged against both LDHI as well as Aurora and Aurora Services
7 which were indirect wholly-owned subsidiaries of the debtors.
8 As a result of these discussions, we entered into basically a
9 comprehensive settlement with Fannie Mae which has been
10 approved and consented to by their conservator, the Federal
11 Housing Finance Administration.

12 Fannie Mae will get an allowed proof of claim in
13 class 7 of \$2,150,000,000. In addition to that, it will
14 receive the balance of certain collateral that was put in an
15 account. At the time that the servicing was moved from Aurora
16 to Nation Star in connection with basically the closing of
17 those transactions, there was a deposit that was put out so
18 that claims could be made against those deposits, that's being
19 administered in connection with the settlement. The balance of
20 that deposit, which is approximately \$22 million will also move
21 over to Fannie Mae. The estate will receive full releases in
22 regard of that.

23 In addition to that, and very important, it will also
24 receive loan files for approximately \$7,600 loans so that it
25 can pursue downstream claims against the originators of the

1 loans, which we believe will have substantive impact. In
2 addition, Your Honor, this in essence will conclude our
3 relationship with Fannie Mae that will have this allowed claim.
4 The Court had previously allowed a derivative claim and a
5 derivative guarantee claim which have been on their own course.
6 Mr. Trumpp, with two Ps, who was in the courtroom submitted a
7 declaration in support of that, Your Honor, basically attesting
8 to the reasons why we believe that this is in the best interest
9 of the estate, and we would request that it be approved.

10 THE COURT: Did you say with two Ps, did you
11 distinguish him from Donald?

12 MR. PEREZ: I did, Your Honor.

13 THE COURT: Okay, well, I don't see Donald here, so I
14 understand there's a difference.

15 MR. PEREZ: There's a difference in hair too.

16 THE COURT: What happens to the \$5 billion reserve?

17 MR. PEREZ: Your Honor, because it's an allowed
18 claim, you don't have to reserve for allowed claims. So once,
19 now that it's an allowed claim, the reserve would be, in
20 essence they would get their payment on D5 I guess, the
21 distribution that will be coming up, they would get their
22 catch-up payment at that time, and then it would be an allowed
23 claim and it would be reserved just like any other allowed
24 claim. But the \$5 billion would go down to in essence partly
25 distribution and then part reserve for the balance that they

1 hadn't received.

2 THE COURT: Does any of that reserve serve to benefit
3 other unsecured creditors in terms of distributions that might
4 be foreseeable in the near term?

5 MR. PEREZ: Absolutely, Your Honor. One of the very
6 big benefits to the estate in addition to the fact that, in
7 essence, we will free up reserves totaling you know \$3.85
8 billion that will be available to other class 7 creditors.

9 THE COURT: Okay. Are there any comments with regard
10 to the proposed settlement? It's obviously beneficial to the
11 estate and in avoiding the subordination fight beneficial to
12 Fannie Mae as well, and I approve it.

13 MR. PEREZ: Thank you, Your Honor. Your Honor, the
14 following matter on the agenda is the plan administrator's
15 motion to classify and allow the claim of Freddie Mac. And,
16 Your Honor, we would request that that matter be continued to
17 the next hearing date which I believe is February 19th.

18 THE COURT: It will be continued to that day.

19 MR. PEREZ: Thank you, Your Honor.

20 MS. MARCUS: Your Honor, the next matter on the
21 agenda is the motion of Lehman Brothers Holding, Inc. to extend
22 stay of avoidance actions and grant related relief, docket
23 number 42023.

24 Before I get started, Your Honor, I just wanted to
25 note that Mr. Lawrence Brandman who is our declarant, has been

1 delayed a bit. He probably won't get here until about 11:30.
2 We're happy to proceed without him, I don't think it's
3 necessary for him to be here. And should it become necessary
4 for anybody to cross-examine him, which I doubt, we can do that
5 when he arrives if that's okay with you.

6 THE COURT: If may just inquire if there's any
7 objection to preceding without the declarant being physical
8 present. There's no objection, so let's proceed.

9 MS. MARCUS: Thank you, Your Honor. Your Honor, this
10 is our sixth motion to extend the stay of the avoidance
11 actions. As the Court is aware, our most recent extension was
12 due to expire on January 20th, 2014 and has been extended by
13 Bridgewater. At the last hearing to extend the stay which took
14 place in July the Court noted that "it is likely going to be
15 more difficult to get a further extension." That was at page
16 41 of the transcript. In light of the Court's comments and the
17 progress that has been made in the ADRs to date, the plan
18 administrator has determined that this will be the last request
19 for an extension of the stay. And rather than ask for six
20 months as we had done previously, we reduced the request to
21 four months.

22 The requested extension of the stay will serve dual
23 purposes. First, it will allow the chapter 11 estates to
24 continue to focus their energy on the ADR process without the
25 distribution of litigation, and to achieve even more consensual

1 resolutions. Second, it will provide the parties with time to
2 develop and implement a protocol for how to move forward with
3 the litigation. We believe that the motion, together with the
4 declaration of Mr. Brandman, makes it amply clear that a
5 further extension of the stay is warranted, that the plan
6 administrator has worked diligently to continue the ADR
7 process, and that the ADR process continues to generate
8 substantial benefits for these estates.

9 As a letter from my partner, Peter Greenberger, which
10 will be filed today indicates, during the past 39 day reporting
11 period, the chapter 11 estates achieved settlements with six
12 counterparties, five as a result of mediation. When those
13 settlements close, the debtors will have received an aggregate
14 of approximately \$2.16 billion. Settlements have been achieved
15 in 303 ADR matters involving 402 counterparties. To date, of
16 the 143 ADR matters that have reached the mediation stage in
17 tier one and have concluded, 132 have been settled in
18 mediation. Nine additional tier one mediations have been
19 scheduled to commence between January 31 and April 3. In order
20 to initiate discussions regarding what will happen when the
21 litigation resumes, in the motion we propose litigation
22 protocols which reflect our suggestions of how issues should be
23 addressed once the stay expires. As part of that process, we
24 are proposing that the plan administrator file a case
25 management order that will deal with the first phase of the

1 distributive action.

2 As set forth on the agenda letter we received, seven
3 responses were limited objections to the motion and several
4 joinders. Importantly, however, the objections were not to the
5 basic relief we are seeking, i.e., an extension of the
6 avoidance stay and the service deadline, but to the proposed
7 litigation protocols. As set forth in our reply, we believe
8 that the objecting parties have misconstrued the relief we
9 sought. We certainly did not intend to preclude SPV avoidance
10 action defendants from being heard with respect to the
11 protocols. In fact, we specifically built in a period of time
12 for SPV avoidance action defendants to review our proposed
13 phase one distributive actions scheduling order and filed
14 responses thereto.

15 THE COURT: I note that your declarant has just shown
16 up.

17 MS. MARCUS: In any event, in light of the
18 objections, as well as issues raised by an ad hoc group of SPV
19 avoidance action defendants who are working through Joshua
20 Dorchak, we decided to make clarifications to the proposed
21 order. Although the blacklined revised order is attached to
22 our reply, we realized yesterday that the page numbers were
23 inadvertently deleted. I have a copy with page numbers that
24 I'd like to hand up to the Court if I may.

25 THE COURT: Yes. Thank you.

1 MS. MARCUS: And I can confirm, Your Honor, that the
2 only change we made was to reinsert the page numbers. The
3 clarifications to the proposed order make it clear that the
4 Court's entry of an order extending the stay and the service
5 deadline will have no bearing on the case management order
6 ultimately entered by the Court regarding the SPV avoidance
7 actions. Specifically, we had made the reference to that order
8 more I'll call it generic by deleting the reference to phase
9 one and simply calling it the distributed actions scheduling
10 order. That change is on page 3 of the blacklined order. And
11 we have also included a specific reservation of rights of all
12 parties with respect to the litigation protocol, and that
13 paragraph is on page 5 of the revised order.

14 We have imposed a requirement that the chapter 11
15 estates and any SPV avoidance action defendants who want to,
16 meet and confer regarding the distributive actions scheduling
17 order, that change is on page 4, and to include a reservation
18 of rights for the avoidance action defendants regarding
19 jurisdictional issues, and that one is on page 5, Your Honor.
20 The blacklined form of the order is acceptable to Mr. Dorchak's
21 group, and based upon the plan administrator's agreement to
22 file the revised order, the members of that group, which
23 includes approximately 19 large financial institutions,
24 represented by sophisticated counsel, agreed not to file
25 objections to the motion.

1 Indeed, the tacit agreement of this group to the
2 relief requested as modified by the revised order represents
3 exactly the type of consensus the Court alluded to at the last
4 hearing to extend the stay. When you said "I believe that what
5 may be required as we approach the end of 2013 is a
6 particularized and focused agreement of the parties to the
7 litigation to extend the stay or to voluntarily agree to defer
8 litigation activity to accommodate ongoing ADR activities."
9 That's in the transcript at page 40.

10 The plan administrator believes that the revised
11 order by making it clear that all issues with respect to the
12 protocols are being deferred, largely addresses the issues
13 raised in the objections. However, to date, the objecting
14 parties have not been prepared to withdraw their objections to
15 the motion, thus we are here today on a contested basis. Other
16 than issues directly related to the protocols, the remaining
17 issues are as follows.

18 First, termination of the SPV ADR stay. Nationwide
19 is the primary proponent of this objection which should be
20 rejected just as it was rejected by the Court at the July 13th
21 hearing. As we indicated then, the SPV ADR stay applies to any
22 entity that is subject to a pending SPV ADR, and is separate
23 and apart from the avoidance action stay that is the subject of
24 our motion. The plan administrator contemplates that there
25 will be some partial relief from the SPV ADR stay provided in

1 connection with the Court's eventual entry of the distributive
2 action scheduling order. That has been proposed so that
3 parties who remain subject to the SPV ADR stay are not put at a
4 relative disadvantage in the distributive action. Thus, under
5 the plan administrator's proposal, no entity that is subject to
6 an SPV ADR stay will be prejudiced by the litigation protocol
7 ultimately adopted. But again, that's not an issue for today.

8 We have also been asked whether the SPV ADR stay
9 precludes parties in pending SPV ADRs from participating in the
10 litigation protocol process that we've outlined. We do not
11 believe that the SPV ADR stay has that affect, and I hereby
12 confirm on the record that the existence of an SPV ADR stay
13 will not prevent parties from participating in the meet and
14 confer process, or ultimately if they have standing, file an
15 objection to the plan administrator's proposed distributive
16 action scheduling order.

17 If Nationwide and those who have adopted its argument
18 objects to the continuation of the SPV ADR stay as to it, then
19 it has two options. It can contact a mediator and seek to have
20 the ADR to which it is a party terminated in which case the SPV
21 ADR stay applicable to it would terminate, or it can file a
22 motion to terminate the SPV ADR stay as to it. In fact,
23 Nationwide's counsel conceded that at the last hearing, and I
24 refer the Court to the transcript at page 20 where Nationwide's
25 counsel stated, "but the reality is and our perspective is, is

1 a two step process, and that process includes opposing this
2 stay and then also moving to lift the stay in the ADR process
3 at least as to us."

4 I note, Your Honor, that the mere fact that a
5 mediation session has taken place and has not been successful,
6 does not mean that mediation will fail. In fact, we have
7 numerous examples of ADRs in which there have been one or more
8 unsuccessful mediation sessions after which through the
9 continued efforts of the mediator and the parties, settlements
10 have been reached. The confidentiality restrictions applicable
11 to the SPV ADR process preclude me from saying too much about
12 the ADRs in which the objecting parties are involved. Suffice
13 it to say, however, that several of these parties haven't given
14 the ADR process a chance.

15 Finally, on this point, Your Honor, we note that as
16 reflected on the chart and next to the declaration of Mr.
17 Brandman, there are several SPV ADRs that were commenced
18 relatively recently. If the Court were to lift the SPV ADR
19 stay now, then in effect the parties effectively would be
20 deprived of an opportunity to resolve these matters through
21 ADR. The plan administrator submits that as it has before, the
22 Court should uphold the integrity of the SPV ADR order and the
23 SPV ADR stay and limit its consideration today to the issue
24 before it, a request for an extension of the avoidance stay.

25 The next issue that remains outstanding are certain

1 information requests. Certain of the objection parties contend
2 that they should get extensive information from the chapter 11
3 estates regarding the other defendants in the distributive
4 actions. The type of information as set forth at page 5 of our
5 reply and is very extensive. It includes the name of every
6 note holder defendant, the name of the applicable issuer, the
7 date and basis of termination, date and amount of distributions
8 and so on. Apparently, the information is being requested so
9 that these objecting parties may use it in the context of a
10 dispute regarding class certification. However, the request is
11 premature at this time. While discovery may be expected with
12 respect to issues that will have to be addressed when the
13 litigation resumes, now is not the time to commence such
14 discovery or even to discuss discovery issues. Rather, to the
15 extent discovery is anticipated, then during the meet and
16 confer process, the participant should build in sufficient time
17 periods to deal with discovery issues. The objecting party's
18 efforts to foist discovery upon the chapter 11 estates at this
19 juncture represents impermissible bootstrapping and should be
20 rejected.

21 Next, Your Honor, is BNY's objection. As noted in
22 our reply, the BNY objection raises issues related to the
23 appropriate role of indentured trustees when the litigation
24 resumes. Without commenting on whether or to what extent the
25 relief sought by BNY is warranted, the plan administrator notes

1 that the relief sought is wholly inappropriate in the context
2 of this motion, and may be inappropriate subject to discussion
3 during the meet and confer process.

4 Finally, Your Honor, two of the objecting parties
5 have argued that there should be no protocols at all until all
6 potential defendants have been identified and served. Neither
7 party has stated any rationale for that objection. The
8 implication of the objection would be that the stay should be
9 further extended, and we're not sure that's really what these
10 parties want. Moreover, only about 17 percent of the amount
11 that the estates seek to recover in the distributive action is
12 held by unidentified note holders. Presumably, the parties
13 having the largest stake in the litigation, can protect the
14 rights of this minority during the negotiation process.

15 In conclusion, Your Honor, the chapter 11 estates
16 believe that they have made a compelling case for this final
17 extension of the avoidance stay and that substantially all of
18 the response is in limited objections can and should be dealt
19 with in the context of a negotiation and promulgation of the
20 distributive actions scheduling order and should be overruled
21 today.

22 We believe that the avoidance stay continues to
23 confer benefits upon the chapter 11 estates as well as the
24 avoidance action defendants, and we request that the Court
25 enter the revised order. I would of course, Your Honor, like

1 to request the opportunity to respond to comments of counsel if
2 necessary.

3 THE COURT: Okay. Thank you for that.

4 MS. MARCUS: Thank you.

5 THE COURT: I'll hear from counsel for the various
6 objecting parties in whatever order you choose to come up.
7 Nationwide?

8 UNIDENTIFIED: Yes, Your Honor.

9 THE COURT: I remember you.

10 UNIDENTIFIED: It's only because they said Nationwide
11 first. Before I do start, Your Honor, I do want to mention
12 I've been in front of His Honor only twice, and both times I've
13 been overruled, but I did wanted to say to His Honor that in
14 looking at the enormous body of work done in this case, it is
15 an astounding body of work by this Court, an astounding legacy
16 regardless of whether we agree or disagree with the Court. And
17 I just wanted to mention that, Your Honor.

18 THE COURT: Thank you. You're still going to lose
19 today, you know that.

20 (Laughter)

21 THE COURT: But let's hear what you have to say.

22 UNIDENTIFIED: I've never been laughed at like that
23 before. I will only express perhaps a little more precisely
24 what our concern is, which is, and maybe this is a little over
25 thinking it, maybe it is a little chicken and egg, which goes

1 first, but it is a concern that if the parties can't work out a
2 resolution, there will still be laminated on top of this the
3 ADR stay. We would be more comfortable if there was even some
4 language in here, just a few words added that would basically
5 indicate that in the course of the meet and confer, the
6 parties, that the lifting of the ADR stay can be an agenda item
7 discussed by the parties. If those few words were just added
8 to the order, which I think is not of great consequence, with
9 that clarification actually in the order, not with what's
10 discussed here in Court, we would be more comfortable with
11 that, Your Honor.

12 THE COURT: Let me just ask a couple of questions
13 without invading any of the confidential mediation procedures
14 that you may have engaged in. Counsel for Lehman pointed out a
15 transcript reference from July 13 in which you acknowledged
16 that this was a two step process, and no effort has yet been
17 made through conventional motion practice to seek relief from
18 the SPV ADR stay. And in effect, what you seem to be engaged
19 in is an indirect attempt to gain relief from that stay without
20 filing a motion for relief. Why not file a motion for relief?

21 UNIDENTIFIED: Actually, I will candidly tell His
22 Honor that we had drafted in anticipating, actually we were
23 anticipating a request for another six month stay. And in
24 anticipation of that, we were anticipating both objecting to
25 that and at the same time we were, I have drafted in my office

1 a motion to lift the ADR stay order. But when we saw that they
2 were seeking a final extension of the stay and it was only
3 going to be four months, and they put in a meet and confer
4 provision to talk about scheduling, which is all fine, we made
5 the decision that instead of being, if you will, a bigger pain
6 to the Court by filing a motion to lift the ADR stay, if we
7 could at least have that worked out through the meet and confer
8 process, or have it clarified.

9 Now, our objection is that it be lifted
10 conterminously and that would be our preference because we
11 believe there's great logic to that. If there are to be
12 restrictions in the ongoing litigation, that should be what's
13 discussed, then everybody evenly is stuck with those
14 restrictions, and there's no disparate treatment for those who
15 are still in ADR and those who are not. So we chose for
16 strategic reason to pull that motion back and not file it at
17 this time in the hope that we can at least have a shot at
18 working this out. And that's why we're now, we've boiled it
19 down an awful lot, Your Honor, from what we were first asking,
20 and also because Lehman has accommodated much of the
21 objections.

22 THE COURT: Now is Nationwide still engaged in any
23 ADR process or have you, you don't have to share anything
24 confidential here, have you not engaged or have you engaged to
25 the point of futility?

1 UNIDENTIFIED: It's unclear to me at this point
2 whether it's futile. It's not futile appearing to us that we
3 have asked to terminate it. And I would say also, but I don't
4 know if it's prohibited whether I can tell the Court whether
5 we've even had mediation. I don't think that's a breach of
6 confidentiality.

7 THE COURT: I don't want to know anything about the
8 mediation.

9 UNIDENTIFIED: All right. Okay.

10 THE COURT: I just want to know whether or not --

11 UNIDENTIFIED: No, just whether we had it.

12 THE COURT: -- in your nuance approach to dealing
13 with the SPV ADR stay, you are a party who has actually engaged
14 or not engaged in the process. And if you've engaged in the
15 process to the point of being unable to reach any resolution,
16 why you wouldn't simply advise the Court of that in connection
17 with a motion you might bring. But you just told me you have
18 no intention presently of bringing a motion because we're only
19 talking about a four month extension of the stay and there's a
20 meet and confer process.

21 That being said, let's just assume for the sake of an
22 argument we're having that the only thing that the order said,
23 it's five pages long, but let's just say it said the stay is
24 extended for four months and the parties are encouraged to
25 establish procedures for the orderly management of the

1 litigation once this final extension of the stay has reached
2 its conclusion. Let's just say it said that. Is there
3 anything that would prevent you from engaging counsel for the
4 plan administrator in a discussion about the SPV ADR stay? Is
5 there anything that would prevent you from reaching an
6 agreement to lift the stay as to you? Is there anything that
7 would prevent you from filing a motion to lift the stay? I
8 think the answer to all of that is there would be nothing that
9 would prevent you from that.

10 UNIDENTIFIED: I agree, Your Honor.

11 THE COURT: And if that's the case, why are we so
12 concerned about slipping in an extra sentence to an order that
13 is simply a long way of saying what I've just said?

14 UNIDENTIFIED: Because as written, and actually my
15 concern to even heighten a little bit more by the reply of
16 Lehman where they actually want that ADR stay kept on, that
17 just heightens our concern. If we just had those few words in
18 there because the Court speaks through its docket, and if the
19 order just had those few words, we would be less concerned.

20 I understand the Court's position on this, but
21 something was mentioned about parties perhaps cracking open a
22 door and bootstrapping into something and we are sadly
23 litigants and there is a level of reading into strategic
24 positioning, Your Honor, and whether its intended or not. And
25 so this is a natural hesitation and concern that we have, but

1 it's a sincere concern, Your Honor.

2 And I would also mention that my read of the ADR stay
3 order, and I may be wrong, but I read that more than once, is
4 that even if the process is declared done, the ADR stay
5 continues as to that defendant. That was my read of that
6 order. But to any event, I hope I have answered His Honor's
7 questions.

8 THE COURT: You have. Let me just clarify one thing.
9 Nationwide, I keep wanting to say, is on my side. But
10 Nationwide's position is that a four month extension of the
11 stay is not a problem. Correct?

12 UNIDENTIFIED: Correct.

13 THE COURT: And the only issue that you have really
14 has to do with the SPV ADR stay more than it has to do with any
15 of the protocols or procedures for dealing with a soft landing
16 as the extended stay comes to an end.

17 UNIDENTIFIED: We see them tied together. We see
18 them tied together somewhat, that somehow this order -- we
19 don't want to be precluded from having as part of the
20 discussions the lifting of the ADR stay. And that's our
21 concern. Maybe we're over concerned about it and maybe we're
22 asking for what the Court might view as gratuitous language,
23 but it remains a sincere concern, Your Honor.

24 THE COURT: Okay. I understand your position. Thank
25 you.

1 UNIDENTIFIED: Thank you, Your Honor.

2 THE COURT: Who is next?

3 MR. GOLD: Good morning, Your Honor, Matthew Gold,
4 Kleinberg Kaplan Wolf and Cohen, for the Liverpool Limited
5 Partnership and Elliott International LP. Your Honor, first I
6 want to echo the points that Ms. Marcus made before, not with
7 respect to the specific motion here, but with respect to the
8 case in general and Your Honor's involvement with it. And we
9 appreciate all your contributions to the case.

10 THE COURT: Thank you.

11 MR. GOLD: Regardless of what this does with what I'm
12 about to say. Second, Your Honor, my clients were part of the
13 group that Ms. Marcus referred to. Mr. Dorchak is not able to
14 be here today, but we were part of that group that thinking
15 along the same lines as Your Honor, preferred to engage with
16 the debtors before the hearing to work out these issues rather
17 than file objections.

18 And the only issue that I wish to touch on is the one
19 that Your Honor was just discussing with counsel for
20 Nationwide. I just want to observe that there are some
21 subtleties involved in the interrelationship of these two
22 issues, and in the concerns of the parties. Ms. Marcus's
23 statements may have implied that basically all that's involved
24 is for particular parties to move to terminate the stay as to
25 those particular parties, and that it's a simple matter of the

1 plaintiff on one hand and a particular defendant on the other
2 hand. And I submit that it's a much more general thing, much
3 in the way in many bankruptcy cases that the question of
4 whether other defendants are going to be moving forward in
5 their cases or not, is in a certain sense of interest to all
6 the parties. And so that the question of how and when the stay
7 of the ADR process gets terminated and which will mean when the
8 litigation actually starts moving as to various parties, is
9 really a broad interest to the entire creditor, the entire
10 defendant class. And therefore, it's crying out for --

11 THE COURT: It's probably also of interest to the
12 entire creditor class as well.

13 MR. GOLD: That may well be. So while I think it may
14 be that the process may be -- there are many ways to get the
15 thing triggered. But it seems to me if there is going to be a
16 meaningful meet and confer concerning the litigation process,
17 that's going to necessarily going to have to include the
18 discussions about the affect of the ADR stay on the entire
19 process, and that's going to be a process that will be of
20 interest, not just to the plaintiff and a particular defendant,
21 but to all the defendants, and possibly creditors to the extent
22 that the post confirmation debtor is not, and plan
23 administrator is not taking their interest into account, and so
24 seems to make sense to us that the process that is being set up
25 for the litigation procedures, whereby the debtor first sets

1 out by filing a suggestion to reach a broad community to
2 interested parties with an opportunity to work the issues
3 through, really should be broadened to include the ADR stay
4 issues as well so that parties are dealing with the issue
5 holistically. Hopefully, parties can work things out in the
6 way that makes sense for everyone to lessen Court involvement.
7 But it just doesn't make sense to narrowly limit what people
8 can and can't talk about. Frankly, I'm not sure whether it's
9 necessary that that be in the order or not except that I have a
10 concern that seems to us beneficial that the largest class of
11 defendants understand that these issues are on the table and
12 being discussed and that the estate creditors be aware that
13 these issues are on the table and being discussed that they can
14 weigh in and that we, when a resolution is reached it includes
15 as many people as possible.

16 THE COURT: Just a question about who you are acting
17 for at this moment in making this request. You identified
18 clients, but you also indicated that you were part of a group
19 apparently led by Mr. Dorchak referenced by Ms. Marcus in her
20 comments, and that this group of financial institutions agreed
21 not to file objections in consideration for a set of procedures
22 now set forth in the amended form of order. Correct?

23 MR. GOLD: That is correct.

24 THE COURT: Are you speaking now only on behalf of
25 your clients or are you speaking on behalf of a broader group

1 of participants in the process that never made this point, a
2 point for drafting at the time that the order was being
3 circulated and ultimately submitted for my approval?

4 MR. GOLD: First, Your Honor, I might note that she
5 also, that Ms. Marcus also referred to sophisticated counsel
6 for those parties. Second --

7 THE COURT: Are you suggesting that not everybody in
8 the group is sophisticated?

9 MR. GOLD: I'm not -- again, this is part of the
10 group, part of the statements of Ms. Marcus that I'm happy to
11 adopt.

12 THE COURT: Are you suggesting that maybe because she
13 said that you're sophisticated counsel?

14 MR. GOLD: I was hoping that would be the implication
15 Your Honor would take from it. I can say that this is an issue
16 that really arose from our perspective somewhat late in the
17 process, and really was triggered by the omnibus response that
18 the debtor filed after we had worked out the language of the
19 order.

20 THE COURT: Can I break in for one second because it
21 would be helpful if I, if I could see the timeline of this a
22 little more clearly. There's a bridge order to extend the
23 stay, there is a motion to extend the stay, the motion
24 references along with the Brandman declaration a four month
25 extension coupled with a set of proposed procedures for

1 establishing protocols that would lead to pretrial scheduling
2 orders and a set of procedures for dealing with the litigation
3 once the stay has expired because the four month extension is
4 the last and final extension. Are you with me so far?

5 MR. GOLD: I am with you.

6 THE COURT: Now, at what point in that sequence do
7 lawyers for various affected defendants form an ad hoc
8 discussion group and engage in a dialogue with counsel for the
9 plan administrator to come up with some agreed changes to the
10 protocols?

11 MR. GOLD: Are you, Your Honor, are you asking what
12 happened previously or what do I foresee going forward?

13 THE COURT: I'm trying to understand what happened
14 previously and I'm trying to understand at what point in the
15 process a group of prospective objectors chose not to object
16 because certain changes were being made by agreement to the
17 protocols that would lead to pretrial orders in the cases.

18 MR. GOLD: I'm not sure I have the exact dates, Your
19 Honor, but roughly in the last week and --

20 THE COURT: Ms. Marcus is anxious to break in and
21 answer this question for you.

22 MR. GOLD: Roughly in the last week and a half is
23 when the defense group started reaching out to each other, it
24 was a little, it took a little while because there was no
25 listing of who the relevant counsel would be. But based on who

1 had filed appearances, who had file objections, we started
2 defining each other, getting together. We first received a
3 brief extension of the time to file an objection from the
4 debtors in order to continue our discussions. Drafts, the
5 orders were passed back and forth and before the extended
6 objection deadline was reached, we reached an order which is
7 substantially what was handed to Your Honor earlier.

8 THE COURT: Okay. What I'm trying to get a sense of,
9 and I'm not, I don't mean to slice this and dice this too
10 finely, is whether the position you are now advocating which is
11 that there be some accommodation of changes to the SPV ADR stay
12 in conjunction with discussions about the soft landing for the
13 avoidance actions, to what extent was that subject adverted to
14 at all in the context of the conversations that took place
15 among the parties? And to what extent have you waived your
16 ability to now make this argument because you effectively
17 agreed to a form of order and you're now reneging on that?

18 MR. GOLD: Your Honor, first to take your second
19 question first, I do not believe that we've waived our ability
20 to discuss with the Court how future litigation ought to be
21 structured and how a series of issues ought to be addressed.
22 And given that these issues were primarily raised not in the
23 initial motion by the debtor, but in their response to other
24 parties' objections, issues that were from parties who were not
25 part of our group, I don't believe that the issue, I don't

1 believe that the issue has been waived in any meaningful sense.

2 THE COURT: I'm just, I'm not using waiver in a
3 technical legal sense as much as sophisticated lawyers are
4 engaged in a conversation about a contested matter, and rather
5 than engage in formal motion practice with pleadings and the
6 like, you end up reaching an agreement, let's call it an
7 agreement in principal as to the nature of the four month
8 extension, and what people are going to be doing during those
9 four months in order to get ready for active litigation.

10 MR. GOLD: Well, Your Honor, part of the problem on
11 the defendants' side is an organizational one. We've been able
12 to get in touch with a certain number of parties and have
13 discussions. We're not to act functioning like an official
14 creditors committee or anything with bylaws or anything that
15 binds the group. It's a coordinating function where people
16 were able to perceive efficiencies to put objections together.
17 And we've done that in a fairly short time period based on the
18 timeline that Your Honor mentioned before.

19 My intention would be that we would be able to
20 enlarge the group, hopefully. Possibly there is a
21 bootstrapping issue here because part of this may be what's
22 determined in litigation procedures, the formation of a
23 steering committee or other such things. But we're not there
24 yet. But we have a larger group of interested counsel on the
25 defense side who can identify from who has filed objections and

1 that we would be able to take the time to try to confer with
2 them and then confer with the debtors or in any order
3 whatsoever. I believe that the process is far less complicated
4 really than some of the far more complex issues that lawyers
5 have gotten together to negotiate in this case and others.

6 I just think, all I'm suggesting here is that what
7 the debtors and the Court can do in that process is to advise
8 other parties who may not be here, who may not have filed
9 objections, and whose rights are preserved in essence with
10 respect to these issues, but who may be interested in the
11 process, to receive some kind of notice and awareness that
12 these issues will be discussed and will be going forward. I
13 believe the lawyers can try to organize themselves together in
14 some informal way so that there are relatively fewer parties
15 with similar interests putting their issues together, and that
16 that should be in the interest of the debtors, it should be in
17 the interest of the defendants and it will take us a little bit
18 of time to put that together, but that they can help by
19 advising others that the process is going on.

20 THE COURT: Well, I fully expect that counsel for
21 defendants will organize, coordinate and endeavor to work
22 together. But you made a reference to parties that have not
23 filed objections. That includes your clients and you, correct?
24 So in effect you're standing here in a somewhat peculiar
25 status. I said that parties could get up and talk, you said

1 some very nice things to me at the beginning which I
2 appreciate. But then you proceeded to argue without the
3 benefit of having filed anything as your ticketed admission to
4 the podium, which you're basically doing, if I'm understanding
5 this correctly, is as a party who participated in an informal
6 process that led to a form of order that makes no mention of
7 SPV ADR stay procedures, you're piling on to the Nationwide
8 position and saying that sounds good to me, and on behalf of my
9 clients, a subset of the group that talked to the plan
10 administrator about this over the last few weeks, you want more
11 even though you filed nothing in reference to that. Nationwide
12 did. So this is like a joinder in Nationwide's position with
13 regard to SPV language to put into the order. Is that correct?
14 I just want to understand what's happening.

15 MR. GOLD: Well, Your Honor --

16 THE COURT: Is that what you're doing?

17 MR. GOLD: I wouldn't quite use all the same
18 adjectives that Your Honor used.

19 THE COURT: You don't have to, you don't have to
20 adopt the adjectives, but how about the meaning?

21 MR. GOLD: I believe that, yes, I have, and if Your
22 Honor wants to say that you do not wish to hear us because we
23 didn't file objections at this point, we could --

24 THE COURT: I've already heard you for 20 minutes.

25 MR. GOLD: Exactly. I was trying to say based on the

1 hearing that is taking place, these are my suggestions. The
2 Court --

3 THE COURT: Okay. Appreciate that.

4 MR. GOLD: --- can take them or not as it sees fit.

5 THE COURT: Now I understand it. Thank you. I'll
6 hear from parties who have actually filed objections now.

7 MR. MILLAR: Good morning, Your Honor, I'm James
8 Millar of Wilmer Cutler Pickering Hale and Dorr on behalf of
9 Union Investment Institution GmbH. We did file an objection,
10 we also joined in Nationwide's objection.

11 I guess I really only have maybe it's a question or a
12 point of clarification. I'm looking at the proposed order and
13 the estate will put a proposed distributed action scheduling
14 order on file, and then we will have a meet and confer.
15 Assuming my client were in mediation at that time, and I made
16 my attempts to meet and confer and then I saw a further order
17 put on file, and the response deadline came, would I be a party
18 that would have standing to file a response? And I'm really
19 making reference to Ms. Marcus's statement during her
20 presentation that all parties with standing may file a
21 response. And if I am in an ADR process, would I have standing
22 to file a response pursuant to this order?

23 THE COURT: That's a very pointed question, and I
24 think that we should at least, I know that Ms. Marcus is going
25 to be responding to everyone at the end, but why don't we give

1 her an opportunity to quickly say yes or no to what you've just
2 said, and I'm probably going to have some views on this myself.

3 MS. MARCUS: Your Honor, the answer is yes provided
4 that your client is a named defendant in one of those actions.
5 You probably know better than I whether Union is a named
6 defendant in either the distributive or the non-distributive
7 action. But as Your Honor knows, with respect to the non-
8 distributive action, from time to time, note holders have taken
9 the position that they have standing. And our position on that
10 in that context is that note holders do not have standing based
11 on Judge Chapman's Innkeepers (phonetic) decisions and others
12 like it. So the standing question has to do with whether
13 someone is a defendant. If your client is a named defendant
14 and you don't like the order, notwithstanding the fact that
15 you're the subject of an SPV ADR, we would not object to your
16 filing an objection to the proposed order.

17 THE COURT: Is that helpful or not helpful?

18 MR. MILLAR: I'm all set. Thank you, Your Honor.

19 THE COURT: If you're all set, then you can sit down.

20 MR. SCHAFFER: Your Honor, Eric Shaffer, Reed Smith,
21 here for the Bank of New York Mellon. Your Honor, the revised
22 order defers most of our issues. I think that's entirely
23 appropriate. We've noted that we don't think the indentured
24 trustee should be a party to the litigation going forward
25 except perhaps for jurisdictional purposes. But again, we will

1 meet and confer.

2 The only open issue from our limited objection goes
3 to timing. We have suggested that it's appropriate to complete
4 service on all of the defendants before the meet and confer.
5 Many of the defendants maybe are holders and our thought is
6 they should all have an opportunity to know that they have an
7 interest in meeting and conferring before that process goes
8 forward.

9 THE COURT: Okay. I understand that's your position.
10 I'm not sure if it's pragmatic, but I understand it.

11 MR. SHAFFER: It shouldn't be that hard to complete
12 the service, but again we're here trying to make sure that all
13 of our holders have every opportunity to fully participate.

14 THE COURT: Okay. I understand that. Thank you.

15 MR. SHAFFER: Thank you, Your Honor.

16 MS. APPLEBY: Good morning, Your Honor, Laura
17 Appleby, of Chapman and Cutler on behalf of First Trust
18 Strategic High Income Fund II. Last night the debtors and fund
19 reach an agreement in principal to settle, so I'm here merely
20 to preserve our rights with respect to our objection. So
21 unless the Court has any --

22 THE COURT: Your rights are reserved, whatever that
23 means in the context of having settled everything. At least
24 it's on the record.

25 MS. APPLEBY: Thank you, Your Honor.

1 THE COURT: Okay. Anyone else?

2 MR. SHEARER: Justin Shearer of Seward and Kissel for
3 PB Capital Corporation, a defendant in the so-called
4 distributive actions. PB Capital has had a chance to review
5 the revised order, and we believe that it resolves our primary
6 objections. While we share some of the concerns of the other
7 defendants that have been expressed today and any other
8 objections, we are largely agnostic on those issues.

9 THE COURT: Okay. Thank you.

10 MR. BURKE: Good morning, Your Honor.

11 THE COURT: You looked a lost there for a while.

12 MR. BURKE: Yeah, I was for a second. That's
13 unfortunate. Michael Burke for Principal Life Insurance
14 Company, Your Honor. We had filed an objection and we
15 appreciate the debtors' efforts at coming up with a revised
16 order that addressed the protocols. Those did address the
17 issues that we raised to the objection. And in light of Ms.
18 Marcus's comments that I believe Mr. Millar eloquently stated
19 or reaffirmed that provided that no named defendant with
20 standing that has been served with an ADR package will be
21 precluded from participating in the litigation protocol with a
22 meet and confer. I believe that's what she stated. Then we
23 have no further objection, Your Honor. Thank you.

24 THE COURT: Fine. Thank you.

25 MR. HEIN: Good morning, Your Honor, John Hein of

1 Hunton & Williams on behalf of Shenandoah Life Insurance
2 Company. I want to thank Mr. Millar for clarifying the
3 standing issue, that was one of our objections. I also want to
4 state on the record Shenandoah joins Nationwide Life Insurance
5 Company's argument that the proposed order should include a
6 coterminous lifting of the SPV ADR stay. That's our position.

7 And I briefly want to just touch on one other remark
8 that Ms. Marcus had made, and we appreciate the debtors'
9 efforts to date. We believe that the debtors should be
10 required to provide the defendants with more information as to
11 the other parties in this litigation. We understand their
12 position is, you're just going to get that in discovery
13 anyways, why do you need it now. Our position is that yes, we
14 need this information to make determinations about the proposed
15 class and whether or not it meets the prerequisite for class,
16 under Federal Rule 23(a). I think she already touched on that.
17 But we also want to just state for the record that disclosing
18 this information now, which they'll have to do later anyway, is
19 going to streamline the process. This is really a cost saving
20 measure, not only for the defendants --

21 THE COURT: Actually it's not a cost saving measure
22 as much as it is a cost shifting measure because it accelerates
23 into a period when the stay is in effect activity that would
24 otherwise occur after the stay has been lifted. So just
25 disagree with the proposition you've just asserted.

1 MR. HEIN: We appreciate the Court's comments.

2 That's just our position we wanted to state on the record.

3 THE COURT: Okay. Fine.

4 MR. HEIN: Thank you, and good luck in your future,
5 Your Honor.

6 THE COURT: Thanks a lot, I appreciate that. Is
7 there anybody else who wishes to be heard at this point? Ms.
8 Marcus, it's your turn to counterpunch.

9 MS. MARCUS: I don't have a lot, Your Honor. With
10 respect to Nationwide, and I suppose Elliott and Liverpool
11 although I join in Your Honor's I don't know if frustration is
12 the right word, but concern that we had an agreement and we
13 don't seem to have an agreement anymore, at least with Mr.
14 Gold's clients. The issues are essentially the same. I'm
15 pretty sure that I just clarified that the extent to which any
16 relief from the SPV ADR order is appropriate will be discussed
17 as part of the meet and confer process. What we object to is
18 putting anything in the order because we really think it's not
19 necessary. If we say this issue can be discussed, then do we
20 have to include every other issue that's on the table? It just
21 seems to us that it's not necessary. And, frankly, I'm not
22 sure what Mr. Gold's argument was, but we believe that we will
23 discuss those issues, but we don't think it's appropriate for
24 anything to be in the order.

25 And with that, Your Honor, that concludes my

1 comments. And we would ask the Court to approve the order.

2 THE COURT: Okay. I'm going to approve the order
3 extending the stay of avoidance actions, and granting certain
4 related relief in the form that it has been presented by
5 counsel for the plan administrator.

6 The objections that have been raised largely have
7 been mooted by the changes made to the form of order. But more
8 importantly, beyond the letters used in the words written in
9 the order itself, there is a spirit that underlies those words.
10 And it's a spirit of cooperation, coordination and the
11 avoidance of unnecessary distress to the litigation in question
12 when the stay expires. What is clear here is that there is a
13 shared mission on the part of the plan administrator as
14 plaintiff and the various defendants to deal with this
15 potentially very complex litigation in an orderly and efficient
16 manner.

17 All that's really going on here is that the stay is
18 being extended in order to accommodate ongoing alternative
19 dispute resolution measures that demonstrably have been
20 extremely beneficial to the Lehman estate, but that also have
21 been beneficial to the counterparties themselves by avoiding
22 the expense, burden and delay of litigation. As noted at the
23 hearing on July 13, this stay can't go on indefinitely, and
24 there is what seems to be a community of interest in
25 recognizing that one additional four month extension is

1 sensible for two purposes.

2 First, it continues the ADR process without the
3 distraction of litigation. But secondly, and perhaps equally
4 importantly, it allows for the possibility of thoughtful
5 planning as to what this litigation is going to look like once
6 it is unleashed. I don't have enough wisdom as to the
7 litigation or as to the issues to be raised in the litigation
8 to be able to micromanage the language of this order as it
9 relates to the development of thoughtfully and orderly
10 procedures for managing the litigation, but I have a lot of
11 faith in the lawyers who are involved in this process. In
12 picking up what was said earlier, they are sophisticated, not
13 only in the underlying complex transactions that gave rise to
14 these distributions, but also as to the ways of effective case
15 management that will be necessary in order to make these cases
16 work as efficiently as possible. So these words are not magic
17 words as much as they are broadly stated concepts that appear
18 calculated to produce pretrial scheduling orders and procedures
19 that the parties themselves have helped to put together. That
20 happens in every case, or at least it happens in every
21 adversary proceeding in this Court. It is completely
22 conventional practice for lawyers to show up in adversary
23 proceedings large and small at a pretrial conference and for
24 the Court to direct if the parties haven't already done it
25 themselves that they meet and confer to develop a set of

1 procedures that are well suited to the litigation that is
2 before the Court. The distributive action and the non-
3 distributive action are complex beyond the allegations and the
4 defenses that might be raised, in part because of the sheer
5 numbers of defendants that we're talking about. Added to the
6 mix is the fact that some defendants have participated in ADR,
7 some have not participated in ADR. Some like Ms. Appleby's
8 client announced a settlement in open court presumably subject
9 to documentation because rights have been reserved. Others
10 like Nationwide just identified another party who has been
11 heard here today, apparently participated in mediation but have
12 not reached agreement. This means that the class of defendants
13 in addition to being numerous is disparate in where they stand
14 in terms of active participation in a case at any point when
15 the music stops.

16 Well the music is going to stop in May and the
17 parties will no doubt negotiate the terms of pretrial orders in
18 good faith. And there's nothing in this order extending the
19 stay that limits or is intended to limit the subject matter to
20 be addressed in these meet and confer sessions.

21 For that reason, while I understand that there are
22 parties that would like there to be expressed language in this
23 order that permits a discussion of possible relief from the SPV
24 ADR stay, there doesn't need to be any such language in order
25 for the parties to discuss that subject. Moreover, I

1 understand the position of the plan administrator here, namely,
2 they've sought an extension of a stay with respect to avoidance
3 actions in particular. And just from a classification
4 perspective, not classes in a plan, but you put balls in a
5 basket and you put bats in another basket, they view balls and
6 bats as not belonging in the same basket. That having been
7 said, that's only for purposes of what goes in this order, that
8 in no way precludes parties from talking about how this stay or
9 the SPV ADR stay may impact the procedures to be developed as
10 parties are meeting and conferring to develop orderly
11 procedures.

12 Accordingly, without prejudice to the rights of any
13 party, I'm prepared to enter the order extending the stay and
14 frankly appreciate the work of counsel both for the plan
15 administrator and for those parties who have objected or who
16 might have objected in reaching a compromise position with
17 regard to the form of the order.

18 And now I also recognize this is my last act in the
19 case. And since I'm uncomfortable saying anything at a time
20 like this other than thank you, I want to thank all of you
21 including those not in the room for making this the experience
22 of a lifetime. We're adjourned.

23 (Proceedings concluded at 11:14 AM)
24
25

I N D E X

RULINGS

DESCRIPTION	PAGE
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1 HEARING re Doc # 2023 - Motion of Lehman

2 Brothers Holdings Inc. to Extend Stay of Avoidance

3 Actions and Grant Certain Related Relief

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CERTIFICATION

I, Theresa Pullan, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter.

Theresa
Pullan

Digitally signed by Theresa Pullan
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